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Washington, Friday, June 14, 1940

The President

EXECUTIVE ORDER

POWER SITE RESTORATION No. 493. PARTIAL REVOCATION OF EXECUTIVE ORDER OF NOVEMBER 22, 1924, CREATING POWER SITE RESERVE No. 759

NEW MEXICO

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421, 36 Stat. 847, the Executive Order of November 22, 1924, creating Power Site Reserve No. 759, is hereby revoked as to the following-described lands:

New Mexico Principal Meridian

T. 12 S., R. 20 W.,
sec. 1, lot 4, SW¼NW¼, and SW¼;
sec. 3, W½;
sec. 4, NE¼;
sec. 10, W½E½, and E½W½;
sec. 15, W½E½, E½W½, and SE¼SE¼;
sec. 22, W½E½, and W½;
sec. 23, E½SE¼;
sec. 24, SW¼;
sec. 26, NE¼NE¼, S½NE¼, NE¼SW¼, S½SW¼, and SE¼;
sec. 27, N½ and SW¼;
sec. 28, E½ and SW¼;
sec. 29, S½;
sec. 30, S½SW¼, and SE¼;
sec. 31, NW¼, and S½SE¼;
sec. 32, S½S½;
sec. 33, S½S½;
sec. 34, S½S½;
sec. 35, N½NW¼, and S½SW¼.
T. 13 S., R. 20 W.,
sec. 3, NW¼;
sec. 4, N½;
sec. 5, N½, and N½S½;
sec. 6, all.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
June 11, 1940.

[No. 8437]

[F. R. Doc. 40-2388; Filed, June 12, 1940; 3:02 p. m.]

EXECUTIVE ORDER

AMENDING THE FOREIGN SERVICE REGULATIONS OF THE UNITED STATES

By virtue of and pursuant to the authority vested in me by section 1752 of the Revised Statutes of the United States (U.S.C., title 22, sec. 132), it is ordered that Chapter IX of the Foreign Service Regulations of the United States be, and it is hereby, amended as follows:

1. The subheading "Federal Security Agency" is placed before section IX-8 in lieu of "Treasury", and the subheading "Treasury" is placed before section IX-9.

2. The words "by the Secretary of the Treasury" are deleted from section IX-8.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
June 12, 1940.

[No. 8439]

[F. R. Doc. 40-2403; Filed, June 13, 1940; 11:26 a. m.]

EXECUTIVE ORDER

AMENDMENT OF EXECUTIVE ORDER No. 7293 OF FEBRUARY 14, 1936, AS AMENDED, PRESCRIBING REGULATIONS GOVERNING THE GRANTING OF ALLOWANCES FOR QUARTERS AND SUBSISTENCE TO ENLISTED MEN

By virtue of and pursuant to the authority vested in me by section 11 of the act of June 10, 1922, c. 212, 42 Stat. 625, 630, Executive Order No. 7293 of February 14, 1936, as amended by Executive Order No. 7831 [1] of March 7, 1938, and Executive Order No. 8107 [2] of May 3, 1939, prescribing regulations governing the granting of allowances for quarters and subsistence to enlisted men of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service who are not furnished quarters or rations in kind, is hereby further amended to the extent that enlisted men of the Army on duty in Bogota, Colombia, and enlisted men of the Navy and Marine Corps on duty in the office of the Naval Attaché, American Embassy, Bogota, Colombia, and the office of the Naval Attaché, American Embassy, Guatemala City, Guatemala, who are not furnished quarters or rations in kind, shall receive, while on such duty, a per-

[1] 3 F.R. 641.
[2] 4 F.R. 1903.

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THE PRESIDENT

RULES, REGULATIONS, ORDERS

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FEDERAL REGISTER

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diem allowance of $3.00 in lieu of subsistence and $1.00 in lieu of quarters.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
June 12, 1940.

[No. 8440]

[F. R. Doc. 40-2405; Filed, June 13, 1940; 11:26 a. m.]

EXECUTIVE ORDER

AMENDMENT OF PARAGRAPH 6, SUBDIVISION VI, SCHEDULE A OF THE CIVIL SERVICE RULES

By virtue of and pursuant to the authority vested in me by paragraph Eighth of subdivision SECOND of section 2 of the Civil Service Act of January 16, 1883 (22 Stat. 403, 404), paragraph 6, Subdivision VI of Schedule A of the Civil Service Rules is hereby amended to read as follows:

"6. During the period beginning July 1, 1940 and ending June 30, 1941, all positions in the Federal Bureau of Investigation except fingerprint classifiers."

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
June 12, 1940.

[No. 8441]

[F. R. Doc. 40-2406; Filed, June 13, 1940; 11:27 a. m.]

EXECUTIVE ORDER

REVOKING IN PART EXECUTIVE ORDER NO. 6039 OF FEBRUARY 20, 1933, AND RESERVING CERTAIN LANDS FOR TOWN SITE PURPOSES

ALASKA

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, as amended by the act of August 24, 1912, c. 369, 37 Stat. 497, it is ordered as follows:

SEC. 1. Executive Order No. 6039 of February 20, 1933, reserving public lands in Alaska for the use of the War Department as a radio station, and for the use of the Alaska Game Commission for pasturage and other purposes, is hereby revoked insofar as it affects the following-described lands:

Tract No. 1

Beginning at corner No. 5 of amended United States Survey No. 1272.

Thence from said initial point, by metes and bounds,

S. 34°43′ E., 14.74 chains, to corner No. 6;

East, 14.60 chains, along line 6–7 of said U. S. Survey No. 1272, to the southeasterly line of right-of-way for wagon road;

Northeasterly, 29.00 chains, more or less, along said southeasterly line of right-of-way, to an intersection with line 3–4 of said U. S. Survey No. 1272;

N. 34°43′ W., 18.00 chains, more or less, to corner No. 4;

S. 55°17′ W., 40.00 chains, to the place of beginning.

The tract as described contains an area of 77.22 acres, more or less.

Tract No. 2

Beginning at corner No. 1 of amended United States Survey No. 1272.

Thence from said initial point, by metes and bounds,

S. 34°43′ E., 4.56 chains, to the true point for corner No. 2, M. C., on St. Paul Harbor;

Along the meanders of St. Paul Harbor the following six courses;

N. 52°44′ E., 1.80 chains, to a point;
N. 33°43′ E., 2.29 chains, to a point;
N. 61°57′ E., 2.06 chains, to a point;
N. 42°03′ E., 2.44 chains, to a point;
N. 61°38′ E., 7.87 chains, to a point;
N. 42°46′ E., 1.59 chains, to the true point for corner No. 3, M. C.;
N. 34°43′ W., 7.76 chains, to a point;
S. 55°17′ W., 27.39 chains, to a point;
S. 34°43′ E., 3.92 chains, to an intersection with line 11–1 of said U. S. Survey No. 1272;
N. 55°17′ E., 9.67 chains, along said line 11–1, to the place of beginning.

The tract as described contains an area of 17.59 acres, more or less.

The directions of the lines refer to the true meridian, the magnetic variation in 1920 being recorded as 20° east.

SEC. 2. The following-described lands on Kodiak Island, Alaska, having a total area of approximately 531.40 acres, are hereby reserved for town-site purposes under section 2380 of the Revised Statutes of the United States, to be hereafter disposed of under applicable town-site laws:

(1) All the vacant, unappropriated, and unreserved public land lying between amended U. S. Survey No. 1272 and the east boundary of the Naval reserve withdrawn by Executive Order No. 8278 of October 28, 1939, and between the steep high hills and the waters of St. Paul Harbor, containing 100 acres, more or less.

(2) The lands described in section 1 of this order, containing approximately 94.81 acres.

(3) The land designated as U. S. Survey No. 1389, containing approximately 336.59 acres, placed under the control of the Secretary of the Interior by Executive Order No. 6039 of February 20, 1933.

SEC. 3. The reservation made by section 2 of this order shall remain in force until revoked by the President or by act of Congress.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
June 12, 1940.

[No. 8442]

[F. R. Doc. 40-2404; Filed, June 13, 1940; 11:26 a. m.]

REORGANIZATION PLAN NO. V

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 22, 1940, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939.[1]

IMMIGRATION AND NATURALIZATION SERVICE

SECTION 1. *Transfer of Immigration and Naturalization Service.* The Immigration and Naturalization Service of the Department of Labor (including the Office of the Commissioner of Immigration and Naturalization) and its functions are transferred to the Department of Justice and shall be administered under the direction and supervision of the Attorney General. All functions and powers of the Secretary of Labor relating to the administration of the Immigration and Naturalization Service and its functions or to the administration of the immigration and naturalization laws are transferred to the Attorney General. In the event of disagreement between the head of any department or agency and the Attorney General concerning the interpretation or application of any law pertaining to immigration, naturalization, or nationality, final determination shall be made by the Attorney General.

SEC. 2. *Transfer of records, property, and personnel.* All records, property, and personnel (including office equipment) of the Immigration and Naturalization Service, and all records, property, and personnel of the Department of Labor used primarily in the administration of functions transferred by this Plan (including officers whose chief duties relate to such administration), are transferred to the Department of Justice: *Provided,* That any personnel so transferred that may be found by the Attorney General to be in excess of the personnel necessary for the administration of the functions transferred by this Plan, shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SEC. 3. *Transfer of funds.* So much of the unexpended balances of appropriations, allocations, or other funds available (including funds available for the fiscal year ending June 30, 1941) for the use of the Immigration and Naturalization Service or the Department of Labor in the exercise of functions transferred by this Plan as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred to the Department of Justice for use in connection with the exercise of the functions so transferred. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided,* That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

[F. R. Doc. 40-2386]

[1] Public Resolution No. 75, 76th Congress, approved, June 4, 1940, provides in part: "* * * That the provisions of Reorganization Plan Numbered V, submitted to the Congress on May 22, 1940, shall take effect on the tenth day after the date of enactment of this joint resolution, notwithstanding the provisions of the Reorganization Act of 1939. * * *"

Rules, Regulations, Orders

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3784]

IN THE MATTER OF UNITED STATES BUSINESS CARD COMPANY, ET AL.

§ 3.18 *Claiming indorsements or testimonials falsely:* § 3.66 (b) *Misbranding or mislabeling—Government, official or other sanction:* § 3.66 (c20) *Misbranding or mislabeling—Manufacture.* Representing in connection with offer, etc., in commerce, of stationery and business forms, that said products are approved by, or manufactured according to specifications of, the United States Government or any agency thereof, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United States Business Card Company, et al., Docket 3784, May 31, 1940]

§ 3.69 (a) (14) *Misrepresenting oneself and goods—Business status, advantages or connections—Size or equipment:* § 3.69 (a) (16) *Misrepresenting oneself and goods—Business status, advantages or connections—Unique status or advantages.* Representing, in connection with offer, etc., in commerce, of printed business cards, that respondent United States Business Card Company is the world's largest manufacturer of business cards, or is the world's largest manufacturer which is engaged solely in the manufacture of business cards, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United States Business Card Company, et al., Docket 3784, May 31, 1940]

IN THE MATTER OF UNITED STATES BUSINESS CARD COMPANY, A CORPORATION; UNITED STATES STATIONERY CORPORATION, A CORPORATION; LEWIS WEISMAN, INDIVIDUALLY AND TRADING AS INCOME RECORD PUBLISHING COMPANY

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of May, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Addison, an Examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, that the respondents, United States Business Card Company, a corporation, United States Stationery Corporation, a corporation, their officers, representatives, agents and employees, and Lewis Weisman, individually and trading as Income Record Publishing Company, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of stationery and business forms in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From representing that said products are approved by, or manufactured according to specifications of, the United States Government or any agency thereof.

It is further ordered, That the respondent United States Business Card Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of printed business cards in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From representing that it is the world's largest manufacturer of business cards;

From representing that it is the world's largest manufacturer which is engaged solely in the manufacture of business cards.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-2393; Filed, June 13, 1940; 11:10 a. m.]

[Docket No. 3917]

IN THE MATTER OF LADY ESTHER, LTD.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely*

or misleadingly—Results: § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that said "Lady Esther Face Cream" penetrates the skin or penetrates to the bottom of the pores of the skin or into or below the skin, or has any unique or unusual or active penetrative properties in relation to the skin, or that dirt from the outside gets into or under the skin or becomes imbedded therein or fills the pores of the skin to the bottom, or that respondent's cream will remove dirt if so located, or that said cream will dissolve dirt or waste matter in the pores of the skin or cleanse them below their exterior openings, or that it sinks into the pores of the skin and then by reverse action or otherwise flushes out the waste matter therein, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (a10) *Advertising falsely or misleadingly—Comparative data or merits:* § 3.6 (b) (2) *Advertising falsely or misleadingly—Competitors and their products—Competitors' products:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (ff10) *Advertising falsely or misleadingly—Unique nature or advantages:* § 3.48 (b) (5) *Disparaging competitors or their products — Goods — Performance.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that the method of cleaning the skin of the face by the use of respondent's said cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin and the exterior openings of the pores, whereas other skin preparations clean only the surface and the exterior openings of the pores, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that blackheads are imbedded dirt or are anything other than waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt, or that the use of said cream (1) will remove blackheads or any part or portion of blackheads except the superficial dirt on the outside surface thereof, or (2) will refine the pores of the skin or correct or remove the cause of enlarged pores or have any effect thereon except that its use may remove superficial accumulations of dirt from the pore openings and may help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings, or (3) will remove from the skin blemishes or rough spots other than those due solely to dryness of the skin, or (4) removes or corrects the cause of enlarged pores or blackheads; or which advertisements represent, directly or through implication, that said cream is a solvent of or dissolves dust, soot, dirt, dead skin cells or the various forms of dirt and waste matter that soil the skin, or that use thereof will affect the pores of the skin advantageously otherwise than as heretofore indicated in this order; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that said cream will overcome, correct or cure a dry skin or do more in affecting a dry skin than furnish a temporary supply of lubrication, or that the cause of an oily skin is the same as the cause of a dry skin, or that said cream is as efficacious on an oily skin as on a dry skin except that it will clean an oily skin at least to the same extent as a dry skin, or that use thereof will prevent or remove wrinkles or lines in the face other than such lines as may be caused by dryness of the skin, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that soap and water are injurious to the skin or that they dry the skin except temporarily, or that the use of said cream supplies dry skin with what it needs to overcome or cure that condition, or that a dry skin is an old skin, or that a dry skin is the cause of all wrinkles or that it is the cause of any wrinkles, without specifying such wrinkles as the kind of wrinkles that are caused by a dry skin, or that all tiny lines become wrinkles, or that any tiny lines become wrinkles without accompanying said statement with a truthful explanation as to the kind or kinds of tiny lines which may or do become wrinkles, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (dd10) *Advertising falsely or misleadingly—Success, use or standing.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that all users of said cream are free from a rough skin or that the use of said cream will banish roughness permanently or have any lubricating effect on the skin more than a temporary lubricating effect, or that use of said cream refreshes tired cells of the skin or brings new life to such cells, or safeguards beauty glands or brings them back to activity, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

§ 3.6 (h) *Advertising falsely or misleadingly—Fictitious or misleading guarantees:* § 3.72 (k10) *Offering deceptive inducements to purchase—Results guarantee.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Lady Esther Face Cream" or other similar preparation, which advertisements represent, directly or through implication, that the respondent guarantees its said cream or the results claimed by the use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection and conjunction with such guarantee and with equal prominence and emphasis, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Lady Esther, Ltd., Docket 3917, May 31, 1940]

IN THE MATTER OF LADY ESTHER, LTD., A CORPORATION

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of May, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Lady Esther, Ltd., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a cosmetic preparation now designated as "Lady Esther Face Cream" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or through implication:

(1) That said Lady Esther Face Cream penetrates the skin or penetrates to the bottom of the pores of the skin or into or below the skin, or has any unique or unusual or active penetrative properties in relation to the skin;

(2) That dirt from the outside gets into or under the skin or becomes imbedded therein or fills the pores of the skin to the bottom, or that respondent's cream will remove dirt if so located;

(3) That said Lady Esther Face Cream will dissolve dirt or waste matter in the pores of the skin or cleanse them below their exterior openings;

(4) That said cream sinks into the pores of the skin and then by reverse action or otherwise flushes out the waste matter therein;

(5) That the method of cleaning the skin of the face by the use of respondent's said cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin and the exterior openings of the pores, whereas other skin preparations clean only the surface and the exterior openings of the pores.

(6) That blackheads are imbedded dirt or are anything other than waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt;

(7) That said cream will overcome, correct, or cure a dry skin or do more in affecting a dry skin than furnish a temporary supply of lubrication;

(8) That said cream is as efficacious on an oily skin as on a dry skin except that it will clean an oily skin at least to the same extent as a dry skin;

(9) That the cause of an oily skin is the same as the cause of a dry skin;

(10) That the use of said cream will prevent or remove wrinkles or lines in the face other than such lines as may be caused by dryness of the skin;

(11) That the use of said cream will remove blackheads or any part or portion of blackheads except the superficial dirt on the outside surface thereof;

(12) That the use of said cream will refine the pores of the skin or correct or remove the cause of enlarged pores or have any effect thereon except that its use may remove superficial accumulations of dirt from the pore openings and may help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings;

(13) That the use of said cream will remove from the skin blemishes or rough spots other than those due solely to dryness of the skin;

(14) That soap and water are injurious to the skin or that they dry the skin except temporarily;

(15) That the use of said cream supplies dry skin with what it needs to overcome or cure that condition;

(16) That all users of said cream are free from a rough skin or that the use of said cream will banish roughness permanently or have any lubricating effect on the skin more than a temporary lubricating effect;

(17) That the use of said cream refreshes tired cells of the skin or brings new life to such cells;

(18) That the use of said cream safeguards beauty glands or brings them back to activity;

(19) That dry skin is an old skin;

(20) That a dry skin is the cause of all wrinkles or that it is the cause of any wrinkles without specifying such wrinkles as the kind of wrinkles that are caused by a dry skin; or that all tiny lines become wrinkles, or that any tiny lines become wrinkles without accompanying said statement with a truthful explanation as to the kind or kinds of tiny lines which may or do become wrinkles;

(21) That the respondent guarantees its said cream or the results claimed by the use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection and conjunction with such guarantee and with equal prominence and emphasis.

(22) That the use of said cream removes or corrects the cause of enlarged pores or blackheads;

(23) That said cream is a solvent of or dissolves dust, soot, dirt, dead skin cells or the various forms of dirt and waste matter that soil the skin;

(24) That the use of said cream will affect the pores of the skin advantageously otherwise than as heretofore indicated in this order.

It is further ordered, That the respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-2394; Filed, June 13, 1940; 11:10 a. m.]

PART 148—RIPE OLIVE INDUSTRY

[File No. 21-342]

Promulgation

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 5th day of June, A. D. 1940.

Due proceedings having been held under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

It is now ordered, that the trade practice rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission in this proceeding, be promulgated as of June 14, 1940.

Statement by the Commission

Trade practice rules for the Ripe Olive Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution in commerce of ripe olives by the packers thereof, and by jobbers, distributors, importers, or other marketers. As promulgated, the rules are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

Ripe olives are produced extensively in the State of California and contiguous area. According to information furnished the Commission, the industry's pack of the ripe fruit, exclusive of chopped olives, approximated 750,000 cases for the season 1937–1938.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference, under the auspices of the Commission, was held in San Francisco, California. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., on January 30, 1940, and all matters there presented, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing under Group I and Group II.

THE RULES

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the requirements of the pure food laws or other applicable provisions of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair trade practices in the interest of the public, and to assist in general law enforcement to this end. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

Unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, as construed in the decisions of the Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in or directly affecting interstate commerce.

§ 148.1 *Definition.* For the purpose of these rules and in their application the following definition shall apply:

Olives unfit for canning or packing. Olives shall be deemed unfit for canning or packing which are unclean, immature, moldy, overripe, infested with fungus, rot, or other defects, or which are in any manner unwholesome. (Rule 1)

§ 148.2 *Olives unfit for canning or packing.* It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent, directly or indirectly, olives of unfit quality for canning or packing as described in Rule 1, *Definition*, as and for olives of canning or packing quality. (Rule 2)

§ 148.3 *Misrepresentation of industry products.* The practice of selling, advertising, describing or otherwise representing, ripe olives, or ripe olive products, in a manner which is calculated to mislead or deceive, or has the capacity and tendency or effect of misleading or deceiving, the purchasing or consuming public with respect to the character, nature, content, brand, grade, variety, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of such products, or in any other material respect, is an unfair trade practice. (Rule 3)

§ 148.4 *Deceptive depictions.* It is an unfair trade practice to use in relation to industry products any photograph, cut, engraving, insignia, vignette, design, illustration, or pictorial or other depiction or device (in catalogs, sales literature, advertisements, or other representations) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public respecting the character, nature, content, brand, grade, variety, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of any such products of the industry; or which is false, misleading, or deceptive in any other respect. (Rule 4)

§ 148.5 *Deceptive concealment.* In the interest of protecting purchasers and preserving fair competition in the industry, full and nondeceptive disclosure should be made by members of the industry in their advertising, sales literature, and other selling representations of the quality, quantity, and size of the olives packed in cans or other opaque containers and offered for sale. Concealment of such information or the nondisclosure thereof, where practiced by the seller with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice. (Rule 5)

§ 148.6 *Substitution of products.* The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice. (Rule 6)

§ 148.7 *Defamation of competitors or disparagement of their products.* The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice. (Rule 7)

§ 148.8 *Commercial bribery.* It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. (Rule 8)

§ 148.9 *Inducing breach of contract.* Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice. (Rule 9)

§ 148.10 *Enticing away employees of competitors.* Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice. (Rule 10)

§ 148.11 (a) *Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount,

[1] As here used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That this shall not apply to the Philippine Islands.

credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,[1] and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce[1], or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however:*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce[1] from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce[1], in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce[1] to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.* It is an unfair trade practice for any member of the industry engaged in commerce[1] to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 11.

(f) *Purchases by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.* The foregoing provisions of this Rule 11 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 11 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U.S.C. Title 15, Sec. 13c) (Rule 11)

§ 148.12 *Aiding or abetting use of unfair trade practices.* It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

Group II

Compliance with the trade practice provisions embraced in the Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

RULE A. *Repudiation of contracts.* Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. *Fake or fictitious bids.* The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bids.

Promulgated and issued by the Federal Trade Commission as of June 14, 1940.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-2396; Filed, June 13, 1940; 11:11 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

AMENDMENT OF RULE U-3D-12

Acting pursuant to the authority granted by the Public Utility Holding Company Act of 1935, and particularly Sections 3 (d) and 20 (a) thereof [Sec. 3, 49 Stat. 810; 15 U.S.C., Sup. III, 79C; Sec. 20, 49 Stat. 833; 15 U.S.C., Sup. III, 79t], and finding such action appropriate in the public interest and for the protection of investors and consumers the Securities and Exchange Commission hereby amends Rule U-3D-12 (§ 250.3d-12) to read as follows:

§ 250.3d-12 *Exemption of certain small holding company systems.* (a) Subject to compliance with paragraph (d) of this rule, any holding company (whether or not registered under the Act) and every subsidiary company thereof as such shall be exempt from every provision of the Act and all rules and regulations of the Commission thereunder, and every such subsidiary company shall be deemed not to be a subsidiary of such holding company within the meaning of any provision of the Act, if either of the following conditions is satisfied with respect to the holding company system which includes such companies and every company of which such holding company is a subsidiary or asso-

ciate: (1) The aggregate annual gross revenues from public utility operations of such system (excluding intercompany sales of electric energy) do not exceed $350,000 when computed in the manner specified in paragraph (b) of this rule; or (2) the aggregate book value of the utility assets of such holding company system does not exceed $1,000,000 when computed in the manner specified in paragraph (c) of this rule.

(b) For purposes of paragraph (a) (1) of this rule, the aggregate annual gross revenues from public utility operations of any system shall be deemed to include:

(1) The gross revenues from public utility operations which were derived during the preceding calendar year by the top holding company therein and by every company which is presently an associate of such holding company (including every company which may have become an associate company during the current calendar year), and

(2) The gross revenues attributable to all other utility assets acquired from any non-system public utility company during the current calendar year by any company within the holding company system. Where figures are available as to the gross revenues derived during the prior calendar year by the selling company, it may be assumed for the purposes of this rule that the gross revenues added by such assets bear the same proportion to the gross revenues of the acquiring system for the preceding calendar year as the book value of such assets bears to the book value of the utility assets of the system at the end of the preceding calendar year.

(c) For purposes of paragraph (a) (2) of this rule, the aggregate book value of the utility assets of such holding company system shall be deemed to include:

(1) The book value at the end of the preceding calendar year of the utility assets of the top holding company therein and of every company which is presently an associate of such company (including every company which may have become an associate company during the current calendar year), and

(2) The present book value of all other utility assets acquired from any non-system public utility company during the current calendar year.

(d) No company within any holding company system shall be exempt by virtue of this rule after March 1, 1940, unless the top holding company therein shall have filed with this Commission a statement that such system falls within the exemption granted by this rule, and showing the aggregate gross revenues from public-utility operations of such system during the preceding calendar year (computed in the manner specified in paragraph (b) of this rule), and the aggregate book value of the utility assets of such holding company system at the end of the preceding calendar year (computed in the manner specified in paragraph (c) of this rule), and shall have renewed such statement within 60 days after the end of each subsequent calendar year. All companies within any system for which a statement has been filed shall continue to be exempt for a period of 60 days after any increase in gross revenues or utility assets which may render paragraph (a) no longer applicable, except in the event of such increase resulting from the acquisition of utility assets or from the introduction of any additional associate company into the holding company system during the current calendar year, in which event the exemption shall forthwith terminate.

Effective June 13, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2402; Filed, June 13, 1940; 11:13 a. m.]

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION

PART 584—MINIMUM WAGE RATES IN THE KNITTED OUTERWEAR INDUSTRY

WAGE ORDER

Whereas, pursuant to sections 5 and 8 of the Fair Labor Standards Act of 1938, the Administrator of the Wage and Hour Division of the United States Department of Labor, by Administrative Order No. 29 [1] dated September 18, 1939, appointed Industry Committee No. 7 for the Knitted Outerwear Industry, and directed said Committee to recommend minimum wage rates for said Industry in accordance with the provisions of the Act and rules and regulations promulgated thereunder; and

Whereas, the Committee included six disinterested persons representing the public, and a like number of persons representing employees in the Industry, and a like number representing employers in the Industry, and the members of each group were appointed with due regard to the geographical regions in which the Industry is carried on; and

Whereas, on October 27, 1939, after an extensive investigation of economic and competitive conditions in the Industry including consideration of the testimony of numerous witnesses and other evidence received at its meetings on October 25 and October 26, 1939, the Committee filed a report containing its recommendation for a minimum wage rate of 35 cents an hour in the Industry; and

Whereas, pursuant to notices which the Administrator caused to be published in the FEDERAL REGISTER on December 27, 1939, and January 12, 1940, respectively setting a date for hearing and designating Thomas Holland, Esquire, as presiding officer thereat, a public hearing on the Committee's recommendation was held in Washington, D. C., on January 22, 1940, at which all interested persons were given an opportunity to be heard; and

Whereas, by publication in the FEDERAL REGISTER on January 25, 1940, notice was given that inasmuch as no person had appeared at the public hearing in opposition to the Committee's recommendation, oral argument would be dispensed with unless the same should be requested on or before February 20, 1940, and no such request was received; and

Whereas, all persons who appeared at said hearing were given leave to file briefs on or before February 20, 1940, and the complete record of the hearing before Mr. Holland was transmitted to the Administrator on February 13, 1940; and

Whereas, the Administrator, after consideration of all the evidence and arguments presented in this proceeding and of the provisions of the Act, particularly Sections 5 and 8 thereof, has concluded that the Committee's recommendation of a minimum wage rate of 35 cents an hour for the Industry, as defined in Administrative Order No. 29, is made in accordance with law, is supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the Committee, will carry out the purposes of section 8 of the Act; and

Whereas, the Administrator has set forth his decision in "Findings and Opinion of the Administrator, In the Matter of the Recommendation of Industry Committee No. 7 for a Minimum Wage Rate in the Knitted Outerwear Industry," dated June 12, 1940, a copy of which may be had upon request addressed to the Wage and Hour Division, Washington, D. C.;

Now, therefore, *it is ordered*, That

§ 584.1 *Approval of recommendation of Industry Committee.* The Committee's recommendation is hereby approved.

§ 584.2 *Wage rates.* Wages at a rate not less than 35 cents an hour shall be paid under Section 6 of the Act by every employer to each of his employees in the Industry who is engaged in commerce or in the production of goods for commerce.

§ 584.3 *Posting of notices.* Every employer employing any employees so engaged in commerce or in the production of goods for commerce in the Industry shall post and keep posted, in a conspicuous place in each department of his establishment where such employees are working, such notices of this order as shall from time to time be prescribed by the Wage and Hour Division of the United States Department of Labor.

§ 584.4 *Definition of industry.* The Industry to which this order shall apply is hereby defined as follows:

The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knit-

[1] 4 F.R. 4017.

ted garments, knitted garment sections or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed: *Provided*, That the manufacturing, dyeing or other finishing of the following shall not be included;

(a) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(b) Fulled suitings, coatings, topcoatings, and overcoatings.

(c) Garments or garment accessories made from purchased fabric.

(d) Gloves or mittens.

(e) Hosiery.

(f) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(g) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(h) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or finer; provided that this exception shall not be construed to exclude from the knitted outerwear industry the manufacturing, dyeing or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

§ 584.5 *Effective date.* This order shall become effective on the 1st day of July, 1940.

Signed at Washington, D. C., this 12 day of June 1940. §§ 584.1 to 584.5, inclusive, issued under the authority contained in Sec. 8, 52 Stat. 1064; 29 U.S.C. Sup. IV, 208.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-2391; Filed, June 13, 1940; 10:21 a. m.]

TITLE 46—SHIPPING

CHAPTER II—UNITED STATES MARITIME COMMISSION

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND CONTRACTORS

PART 262—MINIMUM WAGE, MINIMUM MANNING, AND REASONABLE WORKING CONDITIONS

Rules and Regulations Governing Changes in Minimum Manning and Wage Scales and Reasonable Working Conditions and Hearings Thereon

Sec.

§ 262.101 *Scope of rules.* The following rules are promulgated by the United States Maritime Commission under section 301 (a) of the Merchant Marine Act, 1936, as amended, to govern changes in minimum manning scales, minimum wage scales and minimum working conditions for officers and crews employed on vessels receiving an operating-differential subsidy and hearings thereon:*† [Par. 1]

§ 262.102 *Petition for hearing.* Any interested party desiring revision of any of the standards set up in the minimum manning scales, minimum wage scales or minimum working conditions prescribed by the Commission under section 301 (a) may petition the Commission for a hearing to that end. Such petition shall specify the revision or revisions considered desirable and the reasons in support thereof.*† [Par. 1]

§ 262.103 *Views of interested parties.* Upon receipt of a petition for a hearing, the Director of the Division of Maritime Personnel shall investigate the views of all parties whose interests appear affected by the petition and report the substance thereof to the Commission.*† [Par. 2]

§ 262.104 *Order for and notice of hearing.* If the Commission determines that there is reasonable ground therefor, the Commission shall order a hearing and issue public notice thereof, setting forth the time, place and scope of the hearing. Such notice shall be filed with and published in the FEDERAL REGISTER not less than 15 days prior to the date of the hearing, when practicable.*† [Par. 3]

§ 262.105 *Conduct of hearing and appearances.* The conduct of the hearing shall be a function of the Division of Maritime Personnel except where the Commission shall otherwise direct. Any individual, firm, corporation, group, organization or other party interested in the outcome of the proceedings shall have the right to appear, either personally or by representation, at the hearing and be heard. The duly elected representatives of the organizations which have been certified by the National Labor Relations Board as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearing.*† [Par. 4]

§ 262.106 *Proposed report and service thereof.* Upon conclusion of the hearing, a proposed report shall be prepared containing a statement of the issues, facts, findings and conclusions. A copy of this proposed report shall be served by mail upon each party who shall have appeared at the hearing and requested a copy thereof.*† [Par. 5]

§ 262.107 *Exceptions to proposed report.* Within 15 days after service of the proposed report, any party may file and serve exceptions to any statement therein contained, together with a brief in support thereof, except that parties on the Pacific Coast may file and serve such exceptions and briefs within 20 days after service.*† [Par. 6]

§ 262.108 *Report and recommendations to the Commission.* After expiration of the period for the filing of exceptions and briefs, a report and recommendations shall be submitted to the Commission, together with the transcript of the record of the hearing and subsequent proceedings.*† [Par. 7]

§ 262.109 *Final action of Commission.* The final action of the Commission shall be the adoption of its final report and the issuance of an appropriate order thereon.*† [Par. 8]

By Order of the United States Maritime Commission.

R. L. MCDONALD,
Assistant Secretary.

JUNE 11, 1940.

[F. R. Doc. 40-2392; Filed, June 13, 1940; 10:22 a. m.]

*§§ 262.101 to 262.109, inclusive, issued under authority contained in sec. 301 (a), 49 Stat. 1992, 52 Stat. 955; 46 U.S.C. Sup. 1131 (a).

†The source of §§ 262.101 to 262.109, inclusive, is Rules and Regulations Governing Hearings under section 301 (a) of the Merchant Marine Act, 1936, as amended, approved by the United States Maritime Commission June 11, 1940.

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Marketing Service.

[P. & S. Docket Nos. 553, 554 and 555]

SECRETARY OF AGRICULTURE V. NEW YORK COOP COMPANY, INC., ET AL., RESPONDENTS

In the Matter of the Application of Atwater Live Poultry Co., Inc., Simon & Werner, Inc., Kusinitz Poultry Corp., 121st St. Live Poultry Market, Inc., Morris Gordon, Doing Business as Gordon Bros. Live Poultry Market, and Louis Weidberg, Samuel Weidberg and Harold Weidberg, Doing Business as Louis Weidberg & Sons, Operators of Live Poultry Slaughterhouses in the Metropolitan Area of the City of New York, for and on Behalf of Themselves and All Other Operators of Live Poultry Slaughterhouses Within the Said Metropolitan Area, and the Association of Poultry Slaughterhouse Operators, Inc., Petitioners

ORDER GRANTING HEARING

By orders dated July 1, and August 13, 1937, the Secretary of Agriculture prescribed reasonable rates and charges for the respondents' services and facilities in connection with the rental of coops

and the trucking of live poultry in the designated cities of New York, New York, and Jersey City, New Jersey. These orders were entered in accordance with the provisions of title V of the Packers and Stockyards Act, as amended, 7 U.S.C. §§ 218–231. Thereafter, the respondents petitioned for modification of these orders so as to permit them to pay the buyers 20 cents per coop for the return of coops, and to obtain the funds therefor by charging the commissionmen 20 cents per coop. Hearings were held on this petition, which were concluded on July 8, 1938. The petition was denied by an order dated June 22, 1939.

In a petition dated April 16, 1940, and a supplemental petition dated May 22, 1940, the petitioners pray that the order of the Secretary of Agriculture in the proceedings referred to above, dated July 1, 1937, be rescinded or modified. The petitioners also pray that an opportunity for a hearing be afforded to them and that they be made respondents. It is alleged that the Association of Poultry Slaughterhouse Operators, Inc., one of the petitioners, comprises a membership which handles more than 75 percent of the total business of all slaughterhouse operators.

It appears that the effect of the modification sought would be to increase the cost of coop rental 20 cents per coop, and would thereby afford the petitioners and other slaughterhouse operators a basis for obtaining from the respondent coop companies a payment of 20 cents per coop for each coop returned. Representatives of the petitioners personally appeared before the Secretary of Agriculture and renewed their request for a hearing.

An examination of the petition and the record heretofore made does not disclose any basis for making the petitioners respondents in these proceedings. Upon consideration of the petitioners' plea for a hearing, it is my conclusion that the opportunity for a hearing should be granted. The action hereinafter taken in reopening these proceedings shall not be construed as indicating any determination or conclusions with respect to the merits of the matters and things alleged in the petitions or with respect to their sufficiency to warrant the modification sought.

It is ordered, That these proceedings be reopened and that the petitioners and all interested parties be afforded an opportunity to appear and present evidence with respect to the matters and things alleged in the petitions.

It is further ordered, That the record heretofore made in these proceedings shall be considered in connection with the record made at the hearing herein granted in passing upon the merits of the petitions.

It is further ordered, That this hearing shall begin at 10 o'clock, a. m., D. S. T., June 24, 1940, in Room 624, Federal Office Building, 90 Church Street, New York, New York.

It is further ordered, That a copy of this order be served upon the petitioners and upon the respondents by registered mail.

It is further ordered, That a copy of this order shall be published in the FEDERAL REGISTER.

Done at Washington, D. C., this 13th day of June, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
Acting Secretary of Agriculture.

[F. R. Doc. 40–2407; Filed, June 13, 1940; 11:42 a. m.]

Federal Surplus Commodities Corporation.

DESIGNATION OF AREAS UNDER COTTON STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which cotton order stamps may be used:

The area within the city limits of Springfield, Massachusetts, and the immediate environs thereof as defined by the local representative of the Federal Surplus Commodities Corporation. The posting of the definition of "the immediate environs" in the office of the local representative of the Federal Surplus Commodities Corporation shall constitute due notice thereof.

The area within the Corporate limits of the town of West Springfield, Massachusetts.

The effective dates for the above-mentioned areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

PHILIP F. MAGUIRE,
Executive Vice President.

JUNE 11, 1940.

[F. R. Doc. 40–2387; Filed, June 12, 1940; 2:35 p. m.]

AMENDED DESIGNATION OF AREA UNDER SURPLUS FOOD STAMP PROGRAM

The designation of Kent County, Michigan, as an area under the Surplus Food Stamp Program, published in the FEDERAL REGISTER on March 30, 1940, at page 1251, is amended to read as follows:

"The area within the county limits of Kent County, Michigan, and that portion of Muskegon County, Michigan, located within the village limits of Casnovia, Michigan."

MILO PERKINS,
President.

JUNE 4, 1940.

[F. R. Doc. 40–2408; Filed, June 13, 1940; 11:42 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

IN THE MATTER OF APPLICATION FOR THE EXEMPTION OF THE HANDLING, PACKING, STORING, PREPARING IN THEIR RAW OR NATURAL STATE OR CANNING OF PERISHABLE OR SEASONAL FRESH FRUITS OR VEGETABLES FROM THE MAXIMUM HOURS PROVISIONS

Whereas, applications have been filed by the Northwest Canners Association, the Agricultural Producers Labor Committee, the Lakeland Highlands Canning Company, the West Virginia Horticultural Society and sundry other parties for exemption from the maximum hours provisions of the Fair Labor Standards Act of 1938 of the handling, packing, storing, preparing in their raw or natural state or canning of perishable or seasonal fresh fruits or vegetables as industries of a seasonal nature, pursuant to section 7 (b) (3) of the Act and Part 526 as amended of the Regulations issued thereunder.

Now, therefore, notice is hereby given of a public hearing to be held at the Raleigh Hotel, Washington, D. C., to commence at 10 o'clock a. m. on July 1, 1940, before Merle D. Vincent, an authorized representative of the Administrator, who shall take testimony, hear argument and determine:

Whether the handling, packing, storing, preparing in their raw or natural state or canning of perishable or seasonal fresh fruits and vegetables are industries of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 as amended of the Regulations issued thereunder.

Any person desiring to appear at the aforesaid hearing may appear in his own behalf or in behalf of any other person, provided that he shall file with the Administrator, at his office at Washington, D. C., prior to noon on June 29, 1940, notice of intention to appear which shall contain the following information:

(1) The name and address of the person appearing.

(2) If he is appearing in a representative capacity, the name and address of the person or persons whom he is representing.

(3) Whether he is appearing in support of or in opposition to the application for exemption.

(4) The approximate length of time his presentation will consume.

(5) A description of the specific operations with respect to which the appearance is made.

Evidence will be received on all relevant factors and should include the following:

(a) Length of operating season in weeks for each commodity for past several seasons.

(b) Length of operating season in weeks in plants operating on more than one commodity for past several seasons.

(c) Proportion of total volume of all commodities handled, packed, stored, prepared in their raw or natural state or canned during the fourteen week period or periods of maximum operation during past several seasons.

Signed at Washington, D. C., this 12th day of June 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-2389; Filed, June 12, 1940; 3:37 p. m.]

NOTICE OF CANCELATION OF SPECIAL LEARNER CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Learner Certificates for the employment of learners issued to McKettrick-Williams, Incorporated, 149 Middle Street, Portland, Maine—one effective October 24, 1939 and terminating February 20, 1940, and the other effective December 5, 1939 and terminating October 24, 1940 —are hereby canceled as of the date of their issuance pursuant to action taken under Section 14 of the Fair Labor Standards Act of 1938, paragraph 3 of the Opinion, Findings and Order of October 10, 1939 (4 F.R. 4225), respecting the employment of learners at subminimum wage rates, and the terms of the Special Certificate issued for turnover. Cancelation of said Special Learner Certificates have been ordered for violation of the terms of the Certificate.

These cancelations shall not become effective until after the expiration of the fifteen-day period after the date this notice appears in the FEDERAL REGISTER during which time petitions for review may be filed under § 522.13 of said Regulations by any aggrieved person. If a petition for review is properly filed, the effective date of these cancelations shall be postponed unless and until final action sustaining such cancelations is taken on such petition.

Signed at Washington, D. C., this 12th day of June 1940.

GUSTAV PECK,
Authorized Representative of the Administrator.

[F. R. Doc. 40-2390; Filed June 13, 1940; 10:21 a. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum rate applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued pursuant to section 14 of the said Act and § 522.5 (b) of Regulations Part 522 (4 F.R. 2088), as amended (4 F.R. 4226), to the employers listed below effective June 14, 1940. These Certificates are issued upon their representations that experienced workers for the learner occupations are not available and that they are actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment. These Certificates may be canceled in the manner provided for in § 522.5 (b) of the Regulations and as indicated on the Certificate. Any person aggrieved by the issuance of any of these Certificates may seek a review of the action taken in accordance with the provisions of § 522.5 (b). The employment of learners under these Certificates is limited to the terms and conditions as designated opposite the employer's name.

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS, LEARNING PERIOD, LEARNER WAGE, LEARNER OCCUPATIONS, EXPIRATION DATE

Norfolk Mattress Company, Inc., 110 East 22nd Street, Norfolk, Virginia; Bedding Manufacturing; Mattresses, box springs, studio couches, metal cots, and metal coil springs; 5 learners; 8 weeks for any one learner; 25 cents per hour; Spring Assembler; Spring Fabric Weaver; Helical Maker; Box-Spring Maker; Mattress Maker; Mattress Filler; Mattress Finisher; Studio Couch Maker; February 7, 1941.

Randolph Paper Box Company, 1313 East Grace Street, Richmond, Virginia; Box Manufacturing; Boxes for drug and cosmetic trade; 6 learners; 6 weeks for any one learner; 25 cents per hour; Box-Machine operator; August 9, 1940.

Winston Printing Company, Inc., 413 North Main Street, Winston-Salem, North Carolina; Graphic Arts; Books, Printing, and Lithographing; 2 learners; 6 weeks for any one learner; 25 cents per hour; Cigarette Book Maker; December 13, 1940.

Signed at Washington, D. C., this 13th day of June 1940.

GUSTAV PECK,
Authorized Representative of the Administrator.

[F. R. Doc. 40-2413; Filed, June 13, 1940; 11:55 a. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum wage rate applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued under Section 14 of the said Act and § 522.5 of Regulations Part 522, as amended, to the employers listed below effective June 14, 1940. These Certificates may be canceled in the manner provided for in the Regulations and as indicated in the Certificate. Any person aggrieved by the issuance of any of these Certificates may seek a review of the action taken in accordance with the provisions of §§ 522.13 or 522.5 (b), whichever is applicable of the aforementioned Regulations.

The employment of learners under these Certificates is limited to the occupations, learning periods, and minimum wage rates specified in the Determination or Order for the Industry designated below opposite the employer's name and published in the FEDERAL REGISTER as here stated:

Regulations, Part 522, May 23, 1939 (4 F.R. 2088), and as amended October 12, 1939 (4 F.R. 4226).

Hosiery Order, August 24, 1939 (4 F.R. 3711).

Apparel Order, October 12, 1939 (4 F.R. 4225).

Knitted Wear Order, October 24, 1939 (4 F.R. 4351).

Textile Order, November 8, 1939 (4 F.R. 4531), as amended, April 27, 1940 (5 F.R. 1586).

Glove Order, February 20, 1940 (5 F.R. 714).

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS, AND EXPIRATION DATE

Hagerstown Hosiery Company, Inc., Hagerstown, Maryland; Hosiery; Seamless; 1 learner; September 18, 1940.

Consolidated Garment Mfg. Co., 225 North Market Street, Galion, Ohio; Apparel; Slips, Pajamas, Gowns, Skirts, and Uniforms; 5 learners; October 24, 1940.

Consolidated Garment Mfg. Co., 225 North Market Street, Galion, Ohio; Apparel; Slips, Pajamas, Gowns, Skirts, and Uniforms; 4 learners; October 11, 1940.

Pioneer Cap Company, 319 West 9th Street, Kansas City, Missouri; Apparel; Caps; 3 learners (25 cents per hour); October 24, 1940.

Carter & Churchill Company, 15 Parkhurst Street, Lebanon, New Hampshire; Apparel; Jackets, Pants, Shirts; 5 learners; (25 cents per hour); October 24, 1940.

J. S. Fuller, Inc., Pine Grove Avenue, Kingston, New York; Apparel; Shirts; 10 learners; October 24, 1940.

Vesta Underwear Company, 4 Blount Street, Providence, Rhode Island; Knitted Wear; Knit Underwear; 5 percent; October 24, 1940.

Signed at Washington, D. C., this 13th day of June 1940.

GUSTAV PECK,
Authorized Representative of the Administrator.

[F. R. Doc. 40-2412; Filed, June 13, 1940; 11:55 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT-5565]

IN THE MATTER OF KENTUCKY UTILITIES COMPANY

ORDER TO SHOW FURTHER CAUSE

JUNE 11, 1940.

The Commission, having under consideration the failure of Kentucky Utilities Company to comply with Electric

Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees and with the Commission's Order adopted May 11, 1937, applicable to it as a Public Utility and Licensee, the Order to Show Cause adopted July 14, 1939, the response thereto filed August 14, 1939, and the application for further extension of time in which to comply with the aforesaid Instruction and Order of May 11, 1937, filed therewith;

It appearing to the Commission that:

(a) Good cause has not been shown by Kentucky Utilities Company, in its response filed August 14, 1939, why it has not complied with Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts and with the Commission's Order of May 11, 1937;

(b) Kentucky Utilities Company has not shown, by its response filed August 14, 1939, that it has diligently taken steps to comply with the aforesaid Electric Plant Accounts Instruction 2–D, and the Commission's Order of May 11, 1937, and in its application for an extension of time in which to comply with said Electric Plant Accounts Instruction 2–D and the Order of May 11, 1937, filed concurrent with its response, has not shown good or sufficient reason why said extension of time should be granted;

The Commission orders that:

(A) Kentucky Utilities Company, under oath, show further cause, if any there be, at a public hearing:

(1) Why it has failed to comply with Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts and with the Order of the Commission adopted May 11, 1937;

(2) Why the application of Kentucky Utilities Company for an extension of time within which to comply with the aforesaid Orders of the Commission should not be denied; and

(3) Why the Commission should not institute appropriate proceedings against it, its officers, or directors for failure to comply with the provisions of Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts and the Commission's Order adopted May 11, 1937;

(B) Said public hearing be held commencing on July 9, 1940, at 10 a. m., in the Hearing Room of the Federal Power Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C.;

(C) Nothing contained in this Order shall be construed as a waiver or stay of any requirements of any general Orders of the Commission which may be applicable to Kentucky Utilities Company.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-2411; Filed, June 13, 1940; 11:53 a. m.]

[Docket No. IT-5600]

IN THE MATTER OF SOUTHERN KRAFT CORPORATION

ORDER FOR HEARING

JUNE 11, 1940.

It appearing to the Commission that:

(a) On March 12, 1940, the Commission ordered the Southern Kraft Corporation, a Delaware corporation owning and operating a hydroelectric project on the Susquehanna River near York Haven, York County, Pennsylvania, to show cause by April 22, 1940, why:

It should not forthwith apply for and secure a license for the project under the Federal Power Act; or cease to operate the project without Federal authority; or why appropriate proceedings should not be instituted against it, or further orders issued by the Commission, to conserve and protect the interests of the United States in the premises;

(b) On April 20, 1940, the Respondent filed an answer to the aforesaid order in which it objected to the proceedings so instituted and moved for their dismissal on the grounds that:

(i) The project was fully constructed and lawfully in operation before the enactment of the Federal Water Power Act, and that the Federal Power Act does not by its terms confer on the Commission jurisdiction or authority to require licensing of such a project;

(ii) The Commission is without jurisdiction or authority to enter such an order because the Act is void as transcending the power of Congress, as interfering with the proper authority of the States, and as depriving the Respondent of its property without due process of law; and the general authority conferred on the Commission by Section 4 (g) of the Federal Power Act exceeds the power of Congress;

Without waiving any of these objections, the Respondent stated its answer to the recitals in the order but without admitting the materiality thereof, to wit:

(iii) It denied that the Susquehanna River is a navigable water of the United States except in the State of Maryland or that the river is subject to the jurisdiction of Congress; denied that the project affects the interests of interstate or foreign commerce in the navigation or navigable capacity of the river; denied that the project was constructed or is operated and maintained without appropriate authorization; denied that the construction, operation, or maintenance of the project was or is in violation of the Federal Power Act or that that Act has any application to the construction, operation, or maintenance of the project; averred that the project was constructed and is operated and maintained under and in accordance with the laws of the Commonwealth of Pennsylvania; and averred generally that the Commission has no authority over the project by reason of any provision of the Federal Power Act;

(c) It will be in the public interest to hold a public hearing to determine the issues presented by the order of March 12, 1940, and the answer thereto filed April 20, 1940;

The Commission orders that:

A public hearing to determine the issues presented by the aforesaid order of March 12, 1940, and the answer thereto filed April 20, 1940, be held beginning at 10 a. m., on September 9, 1940, in the Hearing Room of the Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., for the purpose of ascertaining whether or not:

(i) Southern Kraft Corporation, a Delaware corporation, for the purpose of developing electric power, owns, operates, and maintains a hydroelectric project across, along, and in the Susquehanna River near York Haven, York County, Pennsylvania;

(ii) The Susquehanna River is a navigable water of the United States in the States of Pennsylvania and Maryland, including the stretch in which the project is located near York Haven, York County, Pennsylvania, and having such width, depth, channel, banks, and flow that it is used or suitable for use for the transportation of persons or property in interstate or foreign commerce;

(iii) The project is so operated and maintained that it affects the interest of interstate and foreign commerce in, or obstructs the navigation or navigable capacity of, the Susquehanna River;

(iv) The project was constructed, and is operated and maintained, under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920 (within the meaning of those terms as used in Section 23 (b) of the Federal Power Act), or of a license granted pursuant to that Act;

(v) The construction, operation, and maintenance of the project was and is in violation of the terms of the Federal Power Act or of any other act of Congress, including Sections 9 and 10 of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151);

(vi) The Southern Kraft Corporation should forthwith apply for, and secure from the Commission, appropriate authorization for the operation and maintenance of the project in accordance with the pertinent provisions of the Federal Power Act and the Rules of Practice and Regulations of the Commission thereunder;

(vii) The Southern Kraft Corporation should forthwith be required to cease and desist from the operation and maintenance of the project without Federal authority;

(viii) The Commission should forthwith request the Attorney General to institute appropriate proceedings against the Southern Kraft Corporation, or enter such other and further order or orders

as it may find appropriate, expedient, and in the public interest, to conserve and protect the interests of the United States in the Susquehanna River, a navigable water of the United States.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 40-2409; Filed, June 13, 1940; 11:53 a. m.]

[Docket No. IT-5601]

IN THE MATTER OF METROPOLITAN EDISON COMPANY

ORDER FOR HEARING

JUNE 11, 1940.

It appearing to the Commission that:

(a) On March 12, 1940, the Commission ordered the Metropolitan Edison Company, a Pennsylvania corporation owning and operating a hydroelectric project on the Susquehanna River near York Haven, York County, Pennsylvania, to show cause by April 22, 1940, why:

It should not forthwith apply for and secure a license for the project under the Federal Power Act; or cease to operate the project without Federal authority; or why appropriate proceedings should not be instituted against it, or further orders issued by the Commission to conserve and protect the interests of the United States in the premises;

(b) On April 20, 1940, the Respondent filed an answer to the aforesaid order in which it:

(i) Asserted that the project was constructed and has since been operated and maintained pursuant to authorization by the Commonwealth of Pennsylvania antedating the Federal Water Power Act;

(ii) Denied that the Susquehanna River is navigable within the meaning of the Act at the project site or is subject to Congressional jurisdiction, or that the project affects the navigable capacity of the river;

(iii) Asserted that there is no legal requirement that the Respondent should apply for and secure the authorization of the Commission for the operation and maintenance of the project, and that the Commission is without jurisdiction in the premises;

(iv) Asserted that the project constitutes property lawfully acquired before the enactment of the Act, is lawfully operated under the laws of the Commonwealth of Pennsylvania, and that if the Act be construed in the manner underlying the order, then the Act is to that extent a violation of the Constitution of the United States;

(v) Requested that the order be vacated, annulled and dismissed;

(c) It will be in the public interest to hold a public hearing to determine the issues presented by the order of March 12, 1940, and the answer thereto filed April 20, 1940;

The Commission orders that:

A public hearing to determine the issues presented by the aforesaid order of March 12, 1940, and the answer thereto filed April 20, 1940, be held beginning at 10:00 a. m. on September 9, 1940, in the Hearing Room of the Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., for the purpose of ascertaining whether or not:

(i) Metropolitan Edison Company, a Pennsylvania corporation, for the purpose of developing electric power, owns, operates, and maintains a hydroelectric project across, along, and in the Susquehanna River near York Haven, York County, Pennsylvania;

(ii) The Susquehanna River is a navigable water of the United States in the States of Pennsylvania and Maryland, including the stretch in which the project is located near York Haven, York County, Pennsylvania, and having such width, depth, channel, banks, and flow that it is used or suitable for use for the transportation of persons or property in interstate or foreign commerce;

(iii) The project is so operated and maintained that it affects the interests of interstate and foreign commerce in, or obstructs the navigation or navigable capacity of, the Susquehanna River;

(iv) The project was constructed, and is operated and maintained, under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920 (within the meaning of those terms as used in Section 23 (b) of the Federal Power Act), or of a license granted pursuant to that Act;

(v) The construction, operation, and maintenance of the project was and is in violation of the terms of the Federal Power Act or of any other act of Congress, including Sections 9 and 10 of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151);

(vi) The Metropolitan Edison Company should forthwith apply for, and secure from the Commission, appropriate authorization for the operation and maintenance of the project in accordance with the pertinent provisions of the Federal Power Act and the Rules of Practice and Regulations of the Commission thereunder;

(vii) The Metropolitan Edison Company should forthwith be required to cease and desist from the operation and maintenance of the project without Federal authority;

(viii) The Commission should forthwith request the Attorney General to institute appropriate proceedings against Metropolitan Edison Company, or enter such other and further order or orders as it may find appropriate, expedient, and in the public interest, to conserve and protect the interests of the United States in the Susquehanna River, a navigable water of the United States.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 40-2410; Filed, June 13, 1940; 11:53 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4149]

IN THE MATTER OF CONTINENTAL BAKING COMPANY, A CORPORATION

Complaint

The Federal Trade Commission having reason to believe that the Continental Baking Company, a corporation, has been and is using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act (U.S.C. Title 15, sec. 45) and is violating the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, sec. 13), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its complaint, stating its charges as follows:

Charge I

PARAGRAPH 1. The respondent Continental Baking Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent corporation is now and has been engaged in the business of processing, manufacturing, offering for sale, selling and distributing bread and allied products in all parts of the United States. The respondent is one of the largest producers and distributors of bread and allied products in the United States and occupies a dominating position in said industry. The production of respondent's products is carried on at some 82 factories or plants owned and operated by it and located in some 28 states of the United States and in the District of Columbia. Respondent sells its products to retailers, to the institutional trade and to restaurants. Such products are resold by retailers to the consuming public. The term "trade area" as used in this complaint refers to the area surrounding each individual plant of the respondent, within which the products manufactured at such plant are marketed and distributed.

The respondent, through a wholly-owned subsidiary, the Paniplus Company, having the same officers and directors as those of the respondent corporation Continental Baking Company, and which has the same general office as that of the respondent Continental

Baking Company, operates a plant for the manufacture of yeast foods and whole wheat flour in Kansas City, Missouri. The products manufactured by the Paniplus Company are distributed by the respondent to its various plants located in the various states of the United States and in the District of Columbia.

The respondent, through a wholly-owned subsidiary, the Hall Baking Company, having the same officers and directors as those of the respondent corporation Continental Baking Company, and which has the same general office as that of the respondent Continental Baking Company, operates various plants in Buffalo, New York; Cleveland, Ohio; Detroit, Michigan; Boston, Massachusetts; and Denver, Colorado, for the manufacture of bread and allied products, which products are sold in competition with the respondent's nationally advertised products and in competition with similar products manufactured by other competitors.

The respondent maintains and operates two testing laboratories, one located in Kansas City, Missouri, and the other in Jamaica, Long Island, New York, where all ingredients used in the manufacture of the respondent's products are tested and where approvals are given for such ingredients to be used by all plants operated by respondent.

PAR. 3. All commodities and ingredients used in connection with the manufacture of bread and allied products in each plant operated by the respondent are purchased through the respondent's main office at 630 Fifth Avenue, New York, New York. Orders for various ingredients to be used in the manufacturing of bread and allied products are transmitted by the plant managers under the general supervision of the main office in New York to the respondent's main office and there such orders are placed with various sellers for such commodities, and as a result of such orders, commodities are shipped and transported from the state of origin of such products across state lines to the various plants of the respondent.

Such ingredients and commodities essential to the manufacture of the respondent's products are generally of a perishable nature, and upon the arrival at the various plants operated by the respondent are converted into bread and allied products, which in turn are shipped and transported by the respondent to customers located within the trade area of each such plant so operated by the respondent. Some customers of the respondent are located in states other than the state in which such plant is located, and in such cases the products sold by respondent are transported across state lines from the plant to the customer.

In some places respondent maintains and operates depots for the distribution of its products and ships its products from one or more of its plants to such depots, from which they are distributed as hereinafter stated. Some of said depots are located in states other than the states in which the plants serving them are located, and in such cases respondent's goods are transported across state lines from plant to depot.

In the various trade areas, respondent distributes its products from its plants or depots, or both, by trucks owned by respondent, and operated by employed salesmen who are paid for such employment on a salary and commission basis. Such salesmen operate trucks from the various plants or depots over certain specified routes, some of which cross state lines. Each salesman is employed to solicit, take orders for and sell respondent's products to customers and prospective customers located along his route, as well as to transport and deliver such products to such customers. Such salesmen in the ordinary course of their employment, receive and accept from customers orders for respondent's products to be delivered later, and as a result of such orders do at a subsequent time transport and deliver such products to such customers and receive payment for the same. Such salesmen ordinarily furnish their superiors with an estimate sheet each day showing the amount of bread that they will require to fill the following day's orders. Such estimates are based ordinarily upon the standing requirements of the respondent's various customers, which are known on the day previous to the actual transportation and delivery of such products.

PAR. 4. There is and has been a continuous current of trade and commerce in the commodities so purchased by respondent for use in the manufacture of bread and allied products, across state lines, between the point of origin of such commodities and the respondent's plants located in the several states of the United States and in the District of Columbia, thence through respondent's plants, in which such commodities are converted into bread and allied products, and thence in the converted form from the plants, directly to their destination, respondent's customers, or indirectly to such destination through respondent's depots.

Respondent's enterprise is one which is managed, controlled and directed from its principal office in New York, N. Y., and which is operated with the single objective of marketing its products to the consuming public in all parts of the United States. In furtherance of this objective and as a requisite to its achievement, respondent makes constantly recurring and continuous use of interstate channels and facilities of transportation, communication and commerce. The plan of operation of respondent from the purchase or manufacture of raw materials, to the transportation of such materials to its various plants, to the conversion of such materials into bread and allied products and the sale and distribution of such products to retailers and institutions depends upon the use of the facilities and instrumentalities of interstate commerce, and is effectuated through the means and channels of traffic and commerce between and among the several states. Such plan of operation is an integrated whole, and the commerce involved cannot be separated into constituent parts without destroying the flow of such commerce from its origin in the form of raw material, moving across state lines, to respondent's customers, to whom it is delivered in the form of bread and allied products. Respondent is engaged in interstate commerce, and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions in the course of such commerce.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent is now and has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of manufacturing, offering for sale, selling and distributing bread and allied products in the United States.

PAR. 6. In the course and conduct of its said business and in connection with the distribution and sale of its said bread and allied products, respondent is and has been pursuing policies in various trade areas which involve the use of certain unfair methods of competition and unfair or deceptive acts or practices. Said policies have been characterized and effectuated by various oppressive, monopolistic and deceptive acts and practices, among which are the following:

(1) In some trade areas respondent has taken the lead in setting and maintaining the current wholesale prices at which bread and allied products are distributed and sold by all manufacturers marketing said products in the area involved, has informed competing manufacturers, particularly those selling in said trade area exclusively, of the prices at which it was selling such products and of the prices at which it intended to sell same, including contemplated price changes, and has stated or implied by its statements that reprisals in the form of price cutting or valuable preferences to customers, common to it and to such competitors, would follow, in the event of a deviation from respondent's said schedule of prices by any competing manufacturer. In some cases the failure of competitors to follow the lead of respondent in its pricing policies has resulted in such reprisals, to the detriment and injury of such competing manufacturers. By the means above described, respondent has instilled into the minds of its competitors and made it generally understood in the trade that it would not and does not tolerate, without reprisals, sales of bread and allied products at wholesale in any trade area at lower prices than those at which respondent sells its products. The practice above described has had the tendency and effect of preventing any

reduction in the wholesale price of bread or allied products in given trade areas and of eliminating price competition in the sale of such products. Such practices, used in connection with respondent's policy of widely advertising its bakery products, particularly bread, has and has had the effect of prejudicing and injuring the competitive position of competing bakeries and of restraining trade in the products mentioned.

(2) In many trade areas respondent has placed upon the wrappers of bread sold by it to retail stores the price of such bread to the consumer customer of said store, said retail price so printed on said wrappers being based upon the wholesale price made effective by respondent in the manner set forth in the preceding paragraph. It is impossible for the retailer to resell such bread at a price which is either less or more than that so displayed on said wrappers. Such retail price so advertised and displayed is usually designated without the approval or consent of respondent's retailer customers and results in the arbitrary fixing by respondent of such customers' margin of profit in the resale of such bread and in fixing not only the minimum but the maximum prices at which said bread is so resold to the consuming public.

(3) In some trade areas or with some customers in a certain trade area, respondent has promoted the resale of its bread by the retailers to the consuming public by the use of a lottery device, whereby respondent places in some loaves of bread lucky numbers redeemable in a substantial sum in cash or in valuable commodities by the consumer purchaser who purchases the particular loaves containing such lucky numbers. Respondent advertises to the consuming public that among the loaves of bread being sold by its retailers to consumers are lucky numbers with valuable prizes in an amount specified. Respondent uses such lottery device to stimulate and promote the sale of its bread and it effectively accomplishes this purpose, thus prejudicing competing bakers who do not use lotteries in connection with the sale of bread produced by them.

(4) In some trade areas, or with some customers in a certain trade area, respondent has pursued a practice of secretly giving away to some customers operating retail stores certain free goods, such as cup cakes, with bread purchased by such retailer from respondent, to the detriment of competing bakeries who are forced to meet such competition without knowledge of its true character and without the means of obtaining such knowledge.

(5) In some trade areas, or with some customers in a certain trade area, respondent has secretly made allowances in money or gifts of bakery products to certain retailer customers in return for the use of a preferred display position on the customer's bread rack or other facilities, which stimulate the sale of respondent's products and which result in a denial to competitors of the use of such preferred position or such advantageous facilities.

(6) In some trade areas, or with some customers in a certain trade area, respondent has given away to some of its retailer customers free of charge valuable facilities or articles of equipment, such as bread racks and trays, useful for and used by such retailers in promoting the resale of respondent's products. As a condition to such gifts, respondent reserves the most advantageous shelves or places for the display of the products sold by it and requires that the retailer use such racks and trays in a manner which will stimulate the resale of respondent's products and minimize the resale of competitors' products. The cost of such bread racks and trays and equipment is substantial. Many competing bakeries are unable, on account of the limited volume of their sales, to profitably acquire and give away comparable sales facilities and equipment to their retail customers also selling respondent's bread. As a result of respondent's practice of giving away the valuable facilities referred to, many of its competitors are unable to have their bread adequately displayed for resale to consumers in the retail stores which have been so favored by respondent by gifts of the facilities or equipment mentioned.

(7) In many trade areas and among many of its customers in certain trade areas respondent has unfairly and deceptively restrained trade in bread and allied products with the purpose and effect of injuring, destroying or preventing competition between it and competing bakeries and with a tendency toward creating a monopoly in the sale and distribution of said products in the various trade areas in which it markets the same.

PAR. 7. The capacity, tendency and effect of said policies, practices, and acts are and have been to control prices under which bread and allied products are sold in the various trade areas hereinabove described; to determine, at least in part, the prices at which such products are sold and distributed in the said trade areas; to tend to monopolize in the respondent the business of selling and distributing said products in the various trade areas referred to; and to unreasonably lessen, restrain, hinder and suppress competition in the sale and distribution of bread and allied products in the United States.

PAR. 8. The policies, acts and practices above alleged are all to the prejudice of the public, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

Charge II

PARAGRAPH 1. The allegations of Paragraphs One to Five, inclusive, of Charge One are hereby incorporated herein by reference as though fully set forth verbatim, and repeated in this charge.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality, by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers, many of whom are competitively engaged one with the other in the resale of said products within the United States.

Among the general practices pursued by the respondent in discriminating in price, it is alleged that:

(1) The respondent, in certain trade areas or localities, sells its bread of like grade and quality and of a definite weight at one price, while at the same time in another trade area served from the same plant the same type of bread and of the same weight is sold at a lower price. The respondent in certain trade areas or localities sells bread of the same grade and quality and of a definite weight at one price while at the same time in another trade area served from the same plant or factory, bread of the same grade and quality, but greater in weight, is sold for the same price as bread of less weight. The respondent, in certain trade areas or localities, sells bread of the same grade and quality and of a definite weight on a specified route at one price, while at the same time on the same route served from the same plant or factory bread of the same grade and quality, but greater in weight, is sold for the same price as bread of less weight.

(2) The respondent manufactures and distributes its bread products under various brand names and has sold and is selling bread of the same grade and quality under a particular brand name of a definite weight at one price while selling bread of the same grade and quality under another brand name and of a greater weight in the same area at the same price.

(3) In certain trade areas and localities, the respondent grants to certain of its customers, who are competitively engaged with other of the respondent's customers, certain varying discounts which are deducted from the customer's account and which effect a selling price which is lower to such customer than prices paid by other customers.

(4) The respondent causes to be inserted in the wrappers of bread manufactured by the respondent in some of its trade areas coupons of a certain face value, which are redeemable through retailers selling the respondent's products for merchandise handled by such retailers, and the face value of which is paid or granted by respondent to the retailer redeeming the same. The use of such coupons results in sales of bread at lower prices to some customers than to other competing customers.

(5) In certain trade areas the respondent furnishes the retailer with twice the amount of bread that such retailer has ordered, charging said customer for the amount so ordered only. This is done to enable the retailer to give away, free of charge, a loaf of respondent's bread with every loaf sold by him which is the practice followed by such retailer in such cases.

PAR. 3. The effect of the discriminations in price, generally and specifically mentioned in Paragraph Four hereof, has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure, destroy and prevent competition between the respondent and its competitors in the sale and distribution of bread and allied products, and has been and may be to tend to create a monopoly in respondent in said line of commerce in the various localities or trade areas in the United States in which respondent and its competitors are engaged in business.

PAR. 4. The foregoing acts and practices of said respondent are violations of sub-section 2 (a) of Section 1 of the said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended U.S.C. Title 15, Sec. 13 and for other purposes".

Wherefore, the premises considered, the Federal Trade Commission on this 31st day of May, A. D. 1940, issues its complaint against said respondent.

NOTICE

Notice is hereby given you, Continental Baking Company, respondent herein, that the 5th day of July, A. D. 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 31st day of May, A. D. 1940.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-2395; Filed, June 13, 1940; 11:10 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 43-195]

IN THE MATTER OF PUBLIC SERVICE COMPANY OF COLORADO

SUPPLEMENTAL EXEMPTION ORDER

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 12th day of June A. D. 1940.

The Commission, having on the 19th day of April, 1940 ordered that Public Service Company of Colorado be exempt from section 9 (a) of the Public Utility Holding Company Act of 1935 and Rule U-12C-1 promulgated thereunder with respect to the annual acquisition, through acceptance by the Trustee of tenders made for the sale of debentures as provided by the Sinking Fund Indenture of $800,000 in principal amount per annum of its 4% Sinking Fund Debentures due 1949, subject however to the condition that acquisitions of such debentures shall be made for no other purpose than to meet the Sinking Fund requirements of the Sinking Fund Indenture; and having ordered that jurisdiction be reserved with respect to the application of the company regarding open market acquisitions of such debentures; and the Commission, after further consideration, having determined that such open market acquisitions should likewise be exempt;

It is ordered, That Public Service Company of Colorado be exempt with respect to open market acquisitions of its 4% Sinking Fund Debentures to the same extent and subject to the same conditions as previously ordered with respect to acquisitions made through acceptance by the Trustee of tenders of such debentures.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-2397; Filed, June 13, 1940; 11:12 a. m.]

[File No. 47-46]

IN THE MATTER OF GREAT NORTHERN UTILITIES COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION PURSUANT TO REQUEST OF APPLICANT

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of June, A. D. 1940.

The Commission having due regard to the public interest and the interest of investors and consumers, upon the request of the applicant consents to the withdrawal of the application made pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 in the above-entitled matter, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-2400; Filed, June 13, 1940; 11:12 a. m.]

[File No. 60-14]

IN THE MATTER OF AMERICAN GAS AND POWER COMPANY, COMMUNITY GAS AND POWER COMPANY, AMERICAN UTILITIES ASSOCIATES, AND LOWELL GAS LIGHT COMPANY

NOTICE OF AND ORDER FOR HEARING TO DETERMINE WHETHER SUCH COMPANIES SHOULD BE DECLARED TO BE SUBSIDIARY COMPANIES OF OTHER SPECIFIED COMPANIES

At a regular session of the Securities and Exchange Commission, held at its

office in the City of Washington, D. C., on the 11th day of June, A. D. 1940.

The Commission, having been advised by members of its staff, as a result of an investigation, of evidence obtained tending to show that American Utilities Associates, a Massachusetts Trust, is subject to a controlling influence, directly or indirectly, by American Gas and Power Company and Community Gas and Power Company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary and appropriate in the public interest and for the protection of investors and consumers that American Utilities Associates be subject to the obligations, duties, and liabilities imposed upon subsidiary companies of holding companies by the Public Utility Holding Company Act of 1935; and

The Commission having reasonable cause to believe that American Utilities Associates directly or indirectly, owns, controls and holds with power to vote 10 per centum or more of the outstanding voting securities of Lowell Gas Light Company, and that as result of such stock ownership by American Utilities Associates, said company is a subsidiary company, as that term is defined in said Act, of American Utilities Associates, American Gas and Power Company and Community Gas and Power Company;

It is ordered, Pursuant to Section 2 (a) (8) (B) of said Act that a hearing be held to determine whether such controlling influence by American Gas and Power Company and Community Gas and Power Company over American Utilities Associates exists, and if such controlling influence is found to exist to declare American Utilities Associates to be a subsidiary of American Gas and Power Company and Community Gas and Power Company;

It is further ordered, Pursuant to Section 2 (a) (8) (A) of said Act that a hearing be held to determine whether American Utilities Associates directly or indirectly owns, controls and holds with power to vote 10 per centum or more of the outstanding voting securities of Lowell Gas Light Company, and if such ownership is found to exist to declare said company to be a subsidiary of American Utilities Associates, American Gas and Power Company and Community Gas and Power Company;

It is further ordered, That such hearing be held on June 28th, 1940 at 9:30 o'clock in the forenoon of that day, at the Securities Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing room clerk in Room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to American Utilities Associates, Lowell Gas Light Company, American Gas and Power Company and Community Gas and Power Company, and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before June 24, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2398; Filed, June 13, 1940; 11:12 a. m.]

[File No. 70-19]

IN THE MATTER OF THE TOLEDO EDISON COMPANY

EXEMPTION ORDER

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 11th day of June, A. D. 1940.

The Toledo Edison Company, a subsidiary of Cities Service Power & Light Company, a registered holding company, having filed an application pursuant to Rule U-12C-1 of the Rules and Regulations under the Public Utility Holding Company Act of 1935 regarding the annual acquisition of $362,500 of its 3½% Sinking Fund Debentures due 1960; a public hearing after appropriate notice having been duly held thereon; the Commission having considered the record and having made and filed its findings herein;

It is ordered, That The Toledo Edison Company be exempt from section 9 (a) of the Public Utility Holding Company Act of 1935 and Rule U-12C-1 promulgated thereunder with respect to the annual acquisition by open market purchases of $362,500 in principal amount per annum of its 3½% Sinking Fund Debentures due 1960, subject however to the condition that acquisitions of such debentures shall be made for no other purpose than to meet the Sinking Fund requirements of the Sinking Fund Indenture and in an annual amount not exceeding such requirements.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2401; Filed, June 13, 1940; 11:12 a. m.]

[File No. 70-45]

IN THE MATTER OF LACLEDE POWER & LIGHT COMPANY

ORDER UNDER SECTION 6 (B) OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, REOPENING RECORD, ETC.

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 11th day of June, A. D. 1940.

The Commission, by its order entered in the above matter on the 22nd day of May, 1940, having reserved jurisdiction regarding any fees to be paid the attorneys retained by Laclede Power & Light Company in connection with the issuance by that Company of 42 promissory notes, aggregating $372,750 principal amount, and

The Commission having received from Laclede Power & Light Company a communication, dated June 5, 1940, annexed to which is an itemized statement of the services rendered by said attorneys, for which services compensation in the sum of $750 is requested; and

The Commission, after further consideration of such matter, having concluded that it is unnecessary to impose any condition with respect to the payment of attorneys' fees in an amount not exceeding said sum of $750;

It is ordered, That the record in the above matter be and it hereby is reopened for the purpose of incorporating therein said itemized statement and said communication, and that said documents be and hereby are made part of said record, and

It is further ordered, That jurisdiction be and it hereby is released with respect to the payment in satisfaction of any claim for services rendered by said attorneys of said sum of $750.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2399; Filed, June 13, 1940; 11:12 a. m.]

[File No. 67-17]

IN THE MATTER OF NORTHEASTERN WATER AND ELECTRIC CORPORATION

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 13th day of June, A. D. 1940.

Northeastern Water and Electric Corporation, a registered holding company, having filed with this Commission an application and a declaration, and amendments thereto, pursuant to the Public Utility Holding Company Act of 1935, regarding the acquisition by Northeastern

Water and Electric Corporation of notes of twenty-two subsidiary companies in a maximum aggregate amount of $295,500 for the stated purpose of enabling such subsidiaries to finance additions to their plant and property during the year 1940;

The Commission having ordered that a hearing with respect to the acquisition of said notes under the applicable provisions of said act and the Rules of the Commission thereunder be held on May 6, 1940 and such hearing having been held on that date and continued subject to the call of the Trial Examiner;

Northeastern Water and Electric Corporation having subsequently filed an amended application whereby it proposes to renew the following 6% promissory notes maturing 11 months from date of issue by accepting in exchange therefor 5% Promissory Notes payable on demand:

Company	Date of maturity	Amount
Consumers Water Company of Montrose, Pa	May 6, 1940	$3,000
Latrobe Water Company	May 6, 1940	20,000
Do	June 5, 1940	10,000
Riverton Consolidated Water Company	Mar. 21, 1940	5,000
Do	May 7, 1940	7,000
West Penn Water Company	Apr. 5, 1940	3,000
Do	June 5, 1940	5,000

It is ordered, That a hearing on the amended application under the applicable provisions of said Act and the Rules of the Commission thereunder be held on June 26, 1940 at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing room clerk in Room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to said proceedings shall file a notice to that effect with the Commission on or before June 21, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2414; Filed, June 13, 1940; 11:56 a. m.]